

November 24, 1986

John M. Sipple, Jr., Esquire  
Premerger Notification Office  
Room 303 Main Building  
Federal Trade Commission  
Washington, D.C. 20580

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Re: Request for Informal Interpretation under  
§ 803.30 of the Hart-Scott-Rodino Rules

Dear Mr. Sipple:

This letter will confirm our telephone conversation of last Friday, in which I requested an informal interpretation under § 803.30 of the Commission's Hart-Scott-Rodino rules. The question I posed was as follows:

Seller wishes to transfer a plant (including production and separate storage facilities) and certain inventory to two related purchasers. The purchasers are and for some time have been two separate corporations, one a manufacturer/wholesaler and the other a retailer. The purchaser corporations have identical shareholders, but neither is controlled by any other entity. The purchaser corporations are, however, operated and managed as a common enterprise and have the same chief executive officer. This structure predates the negotiations for these purchases and was not created for purposes of this transaction or for avoidance of premerger notification filings.

As a result of negotiations between the seller and the purchaser, the production and storage facilities will be sold to the manufacturer/wholesaler corporation, and related product inventory will be sold to the retailer corporation. The purchases are structured as asset transfers. The fair market value of the plant and storage facilities is less than \$15 million. The fair market value of the inventory is also less than \$15 million. The combined value of the plant and storage facilities and the inventory exceeds \$15 million.

  
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You have told me, first, that the purchaser corporations are each acquiring persons in two transactions which are separately analyzed for Hart-Scott-Rodino purposes. Under the facts which I have supplied, neither of these transactions is reportable because neither is valued at more than \$15 million.

You have also told me that no S 801.90 issue arises under these facts, because (1) the purchaser corporations have been separate persons for some period of time and not for purposes of avoiding reporting and (2) there appears to be a valid business reason for transferring the plant and storage facilities and the inventory to the separate purchaser corporations.

If this summary does not comport with your understanding of our conversation, I would appreciate your contacting me promptly. Thank you for your assistance.

Sincerely yours,  


*Called on 11/25 to confirm understanding.*

*Based on facts, the purchasing corporations appear to be separate persons.*

*Also indicated that facts do not suggest that the transaction is structured as an avoidance device.*